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FILE: WAC 04 054 52973 Office: CALIFORNIA SERVICE CENTER Date: **JAN 04 2005**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for *Michael T. Kelly*
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a software/hardware development company that seeks to employ the beneficiary as a programmer analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel files a brief.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the

director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a programmer analyst. The petitioner indicated in its December 14, 2003 letter that it wished to hire the beneficiary because he possessed a bachelor's degree and work experience in the computer field. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in a computer-related field for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the director did not give appropriate deference to the evaluation provided by an individual with authority to grant college level credit. Counsel provides additional information regarding the evaluator, as well as a second evaluation by a different evaluator.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a computer-related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The director found a number of faults with the evaluation initially provided by the petitioner. Specifically, he stated that there was not adequate evidence that the evaluator was authorized to grant college credit for training and/or experience in the specialty, that the institution was accredited or that the institution has a program for granting such credit based on an individual's training and/or work experience. In addition, the director stated that the letter that was provided to support the evaluator's credentials was 18 months old at the time it was submitted, and so it did not establish that the evaluator was still employed by the college.

While it is true that the petitioner should have provided a more current letter attesting to the evaluator's status with the college, his authority to grant college-level credit, and the existence of a program to grant such credit, some of the information was provided on appeal and is sufficient to establish the evaluator's credentials. The director stated that the evaluator should have provided copies of personnel documents to establish his employment and that he should have provided pages from the college's catalog describing its program for granting college credit for experience. A cursory review of the website of the employing college confirms that the evaluator is currently employed at the college, that the institution is accredited, and that it has a program for granting college level credit for work experience. The letter that was provided with the petition, as well as the one provided on appeal, was signed by the dean of the School of Business, which is adequate support for the statements in the letter. The AAO acknowledges that the petitioner has met the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and has established that the beneficiary has the equivalent of a bachelor's degree in the specific specialty required by the specialty occupation. The director's comments on this issue are withdrawn.

The petition still may not be approved, however. Section 214(i)(2)(c) of the Act, 8 U.S.C. § 1184(i)(2)(c), 8 C.F.R. § 214.2(h)(4)(iii)(c)(4), states that a petitioner applying for classification of a beneficiary as an H-1B nonimmigrant worker must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, **and** recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The petitioner has established the first requirement, but has not established the second. Although the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v) provide guidance on "recognition of expertise" within the context of that particular section of the regulation, the regulations do not define how "recognition of expertise" is to be determined in this instance. The petitioner must provide evidence establishing that the beneficiary has had progressively responsible experience in the specific specialty, in order to establish recognition of expertise.

The record contains the beneficiary's resume, as well as four letters and/or employment contracts from the previous employers. The beneficiary's resume does indicate the possibility of progressively

responsible experience, working as a team leader in some instances. The letters, however, do not provide any information about the skills and duties required of the positions, or provide any detail regarding the beneficiary's progression in his six years as an employee. Without this sort of documentation, the petitioner has not established that the beneficiary has recognition of expertise.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.